



U.S. Department of Justice

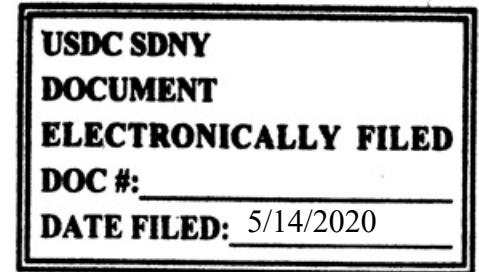
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May 13, 2020

BY ECF

Honorable Robert W. Lehrburger
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: *Natural Resources Defense Council v. United States Environmental Protection Agency*, 20 Civ. 900 (ALC) (RWL)

Dear Judge Lehrburger:

This Office represents the United States Environmental Protection Agency ("EPA"), in the above-captioned action. Pursuant to the Court's Scheduling Order, Dkt. No. 14, we write jointly with Plaintiff Natural Resources Defense Council ("NRDC") in advance of the initial conference set for May 20, 2020, at 2:30 p.m.

The Court has ordered that the parties prepare a civil case management plan and scheduling order consistent with the Court's individual rules. The parties respectfully request that they be relieved of this obligation. Because this is an action filed pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), it is not generally subject to civil discovery; nor do the parties currently foresee any need for discovery. Moreover, pursuant to Local Civil Rule 16.1, the case is exempt from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b). The parties expect that this case will be resolved either through the parties' agreement, or by the submission of cross-motions for summary judgment on the basis of agency declarations. *See Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994). Accordingly, most of the fields in the Court's proposed case management plan form are not relevant to this case. The parties have addressed all applicable portions of the proposed case management plan below.

Brief description of the case. In this FOIA action, NRDC seeks records from EPA related to the content of any speeches, talks, remarks, or presentations that former EPA Administrator Pruitt made since February 17, 2017, to any people or groups who are not part of the federal government. Compl. ¶¶ 3, 26. NRDC submitted its FOIA request on April 24, 2017. EPA responded on April 4, 2019, saying that the agency had completed its search and had located 94 pages of responsive records, which it was withholding in whole. *Id.* ¶¶ 4, 30. NRDC filed an administrative appeal, which was partly granted. *See id.* ¶¶ 5, 6, 31-33. EPA did not release any records in response to NRDC's administrative appeal before NRDC filed this complaint on February 3, 2020. On March 28, 2020, EPA produced portions of approximately 94 pages of

documents responsive to Plaintiff's FOIA request and asserted that the remaining portions are exempt. NRDC seeks production of all non-exempt records responsive to its original request, as well as identification of any withholdings and description of the basis of such withholdings.

Meet and confer. The parties met and conferred on numerous occasions both telephonically and via e-mail pursuant to Federal Rules of Civil Procedure 16(c) and 26(f), regarding a schedule for an additional search and production for non-exempt documents responsive to Plaintiff's FOIA request.

Alternative Dispute Resolution / Settlement. The parties have engaged in discussions about a proposed search and production schedule for release of any additional responsive records that may be located. Alternative dispute mechanisms would not be effective at this point in the litigation.

Subject matter jurisdiction. Plaintiff asserts that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

Amended Pleadings. The parties do not currently foresee any need for joinder or amended pleadings. However, in the event that joinder or amended pleadings should be needed, the parties propose a deadline of July 31, 2020.

Preliminary proposed schedule for processing and release of records. The parties' preliminary joint proposed schedule for EPA to conduct an additional search for documents responsive to Plaintiff's FOIA request is as follows:

EPA is currently preparing search parameters for an additional search for documents that may be responsive to Plaintiff's FOIA request and is currently considering suggestions from Plaintiff related to the proposed search.

On or about **May 27, 2020**, EPA expects to have conducted an initial pre-case assessment, which will provide a preliminary estimate of the number of potentially responsive records that will require review. EPA will then process the documents for review and populate a workspace in the Agency review platform.

On or about **June 10, 2020**, EPA expects to commence review of the collected records. EPA will review documents at a rate of 300 documents per month and produce any responsive, non-exempt documents, or portions thereof, on a rolling basis.

Within 14 days of its final production, EPA will provide to Plaintiff information pertaining to any record, or portion thereof, that has been withheld from production as exempt, pursuant to 40 C.F.R. §2.104(h)-(i).

Within 14 days thereafter, NRDC will identify any withholdings, or any other aspect of EPA's search or justifications for withholdings, that it intends to challenge, and the parties will meet and confer in an attempt to resolve any such disputes.

Thirty days thereafter, the parties will write jointly to the Court to advise whether summary judgment briefing is necessary.

In the event unexpected circumstances arise that prevent EPA from completing its productions on the dates outlined above, the parties will in good faith attempt to reach agreement regarding an extension of the relevant deadline(s), and either the parties will advise the Court of any agreed-upon extension or EPA will file a letter motion seeking an extension.

After EPA completes its initial pre-case assessment on or about May 27, 2020, the parties hope to negotiate and jointly submit a final proposed production schedule for the court's review and endorsement. The parties respectfully request a fourteen-day adjournment of the Initial Pretrial Conference currently scheduled for May 20, 2020, *see* ECF No. 14, to allow the parties time to attempt to reach such a negotiated agreement.

Thank you for your consideration of this matter.

The Court hereby so-orders all deadlines proposed above. Accordingly, there is no need to hold an initial pretrial conference. The May 20, 2020 conference is hereby cancelled. If necessary, the parties are invited to reach out to the Court to schedule another conference.

SO ORDERED:

5/14/2020



HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

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Respectfully submitted,

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- and -

/s/ consent by email 5/13/20
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